JAMES HUFF
PETITIONER

VS.

APPEAL FROM HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE

BLUEGRASS MATERIAL CO., LLC
and HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

On appeal, Huff asserts the ALJ erred in relying upon the opinions of Dr. Gregory Snider in dismissing his claim for work injuries due to cumulative trauma. Huff contends the ALJ should have found he sustained cumulative trauma injuries based upon the opinions of Dr. Arthur Hughes and Huff’s testimony.

On April 16, 2015, Huff filed a Form 101 alleging work-related cumulative trauma injuries to his neck, back and right shoulder (2015-00533), a Form 103 alleging occupational hearing loss (2015-00534), and a Form 102-OD alleging an occupational disease of silicosis (2015-00535).

By Order dated May 27, 2015, the ALJ consolidated the claims and directed all future pleadings be filed under Claim No. 2015-00535.

Huff later amended his claim to assert claims for cumulative trauma left shoulder and psychological overlay work injuries.

Although numerous medical records were introduced, only Drs. Hughes and Snider provided an impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”).
Huff introduced the Form 107 completed by Dr. Hughes on June 23, 2015, in which he diagnosed the following:

1. Neck pain.
2. Right shoulder pain and limitation of motion.
3. Left shoulder pain and limitation of motion.
4. Right hip pain.
5. Left hip pain.

Dr. Hughes attributed all these conditions to work-related cumulative trauma. He opined these “symptoms had been asymptomatic, dormant, and non-disabling but have been aroused into disabling condition by his latest employment.” Pursuant to the AMA Guides, Dr. Hughes assessed zero impairment ratings for the neck, hips, and lower back. However, he assessed a 7% impairment rating for the right shoulder and a 4% impairment rating for the left shoulder.

In an August 19, 2015, report, Dr. Snider diagnosed bilateral shoulder pain by report but concluded Huff did not sustain cumulative trauma injuries. He assessed a 0% impairment rating pursuant to the AMA Guides for all such alleged injuries.
In the January 30, 2017, Opinion and Order, concerning the alleged cumulative trauma injuries, the ALJ provided the following discussion, analysis, and findings of fact:

Plaintiff’s injury claim is for cumulative trauma. Although he complained extensively about neck and low back symptoms he attributes to work at both his discovery deposition and the final hearing. However, Dr. Snider nor Dr. Hughes find no evidence of occupational cumulative trauma to those body parts. As there is no medical evidence to support an award as to the neck and low back, those parts of the injury claims must be dismissed.

Dr. Snider found no evidence of cumulative trauma in connection with either shoulder. However, plaintiff’s allegations of physical cumulative trauma to his shoulders are supported by his treating physician, Dr. Perry. Dr. Hughes assessed 7% right shoulder impairment and a 4% left shoulder impairment that he attributed to cumulative trauma. Both of those impairment ratings were based on limitations in range of motion and complaints of pain. The plaintiff’s treating physician, Dr. Kelvin Perry was sent a Medical Questionnaire by the defendant/employer’s HR Director. The questionnaire was related to the accommodations for Mr. Huff from the employer’s ADA perspective. The questions included:

1. What is [sic] nature of the employee’s medical condition?
Pt has positive crepitas with movement right shoulder with decrease ROM and positive pain with abduction of right shoulder.

2. Is the employee under your care for a medical condition, and what is the course of treatment?

Pt under chronic treatment for cardiac issues as well as chronic joint pain.

3. Is the employee substantially limited in the performance of any major life activities, including caring for oneself, performing manual tasks, seeing hearing, eating, sleeping etc.

Pt is limited to standing/walking 30 min at a time. Sitting 3 hours per day.

If you believe the employee is substantially limited in a major life activity is the limitation temporary or permanent?

Dr. Perry opined that Mr. Huff could only perform certain duties such as standing sitting, reaching handling occasionally.

Reaching overhead push/pull – never.

Dr. Perry opined that Mr. Huff could not perform the tasks/duties identified in his job description.
The statement is date [sic]
September 28, 2015.

At a CDL exam with Dr. Dahhan in
July, 2014, only a few months before
plaintiff developed his heart problems
and stopped working to draw STD and LTD
benefits on the heart condition, he
denied any muscle, joint, or other
musculoskeletal problems. It does
appear that plaintiff had prior
specific injuries to the right
shoulder, but without any significant
residuals.

The medical evidence would
indicate that Mr. Huff stopped working
primarily because he developed heart
arrhythmia, a condition for which he
underwent surgery and on which he drew
both STD and LTD benefits. Dr. Pampati
diagnosed generalized osteoarthritis in
his shoulders, small joints of the
hands, knees and hips, cervical and
lumbar spines.

ANALYSIS FINDINGS OF FACT AND
CONCLUSIONS OF LAW

1. The facts as stipulated by the
parties.

2. Work-relatedness/causation.

When the causal relationship
between an injury and a medical
condition is not apparent to the lay
person, the issue of causation is
solely within the province of a
medical expert. Elizabethtown
Sportswear vs. Stice, 720 SW2d 732,
733 (Ky. 1986); Mengel vs. Hawaiian
Tropic Northwest and Central
Distributors, Inc., 618 SW2d 184 (Ky.
1981). The fact-finder in a workers
compensation case may draw reasonable inferences from the evidence, reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversarial parties' total proof. *Magic Coal Company vs. Fox*, 19 SW3d 88 (Ky. 2000); *Jackson vs. General Refractories*, 581 SW2d 10 (Ky. 1979); *Caudill vs. Maloney's Discount Stores*, 560 SW2d 15 (Ky. 1977). This is true even with the medical testimony. When conflicting evidence is presented, the AU may choose whom or what to believe. *Pruitt v. Bugg Bros.*, 547 S.W.2d 123, 125 (Ky. 1977). The AU may also choose to accept portions and disregard other portions of an expert witness' testimony. *Copar. Inc. v. Rogers*, 127 S.W.3d 554 (Ky. 2003).

In reviewing the burden of proof and applying that standard to the evidence in this case, I find the Plaintiff has not sustained his burden of proof regarding the causal relationship between the cumulative trauma averred and his back, neck and shoulder condition(s).

Although the causative connection between the plaintiff's work and any cumulative injurious traumas must come from a medical witness, it is noted here that Mr. Huff's work for defendant was not in later years the heavy continuous labor he had performed in the preceding years in a different position with the employer. Additionally, the medical proof is not sufficient to find a causal connection between his back, neck and shoulder conditions and his work activities.

Important to the undersigned is the obvious primary debilitating
condition -- his cardiac condition. While his treating physician discusses his right shoulder issue --- a review of the medical evidence gives Dr. Snider's opinion more weight.

Simply put, the Plaintiff's evidence is not sufficient to carry his burden of proof as it relates to work related/causation of his cumulative trauma.

Huff filed a petition for reconsideration requesting the ALJ reconsider her reliance upon the opinions of Dr. Snider and asserting the same arguments he now makes on appeal. Huff requested the ALJ provide sufficient findings in order to apprise whether Dr. Snider had sufficient information regarding his job duties to determine Huff did not suffer cumulative trauma injuries.

In the March 22, 2017, Order overruling the petition for reconsideration, the ALJ provided the following:

This matter comes before the undersigned Administrative Law Judge (ALJ) upon the plaintiff’s Petition for Reconsideration. Specifically, the plaintiff avers the report and opinion of Dr. Gregory Snider does not constitute substantial evidence on which the undersigned could rely. The plaintiff argues that because Dr. Snider was not supplied with all of the Plaintiff’s medical records (from the treating physician Dr. Perry) his
opinions cannot be relied upon for the undersigned’s findings. I disagree.

Comparing/contrasting the opinions of the various evaluating and treating physicians is the reason for the statement quoted by the plaintiff – taken from the Opinion p. 13. Obviously there are differences of opinions. The undersigned considered all of the medical opinions in this case – and relied on Dr. Snider concerning the issue of work-relatedness/causation of the plaintiff’s alleged cumulative trauma.

When conflicting evidence is presented, the ALJ may choose whom or what to believe. Pruitt v. Bugg Bros., 547 S.W.2d 123, 125 (Ky. 1977). Furthermore, the ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party’s total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88, 96 (Ky. 2000). It is also recognized that the ALJ is the sole fact-finder and in that role may choose to accept portions and disregard other portions of an expert witness’ testimony. Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003). I found Dr. Snider’s opinion considered numerous medical records of the plaintiff. I found Dr. Snider’s ultimate conclusions the most persuasive of the medical proof before me in this case. See Commonwealth, Transportation Cabinet v. Guffey, 42 S.W.3d 618 (Ky. 2001). I find no error in the Opinion and Award.

The remainder of the Petition for Reconsideration is primarily the Plaintiff’s re-arguments on the merits of the claim and is thus not allowed pursuant to Frances vs. Glenmore
Distilleries, 718 SW2d 953 (Ky. App. 1986). Wherefore it is ORDERED that the Plaintiff’s Petition for Reconsideration and same is DENIED.

On appeal, Huff contends “Dr. Snider makes it abundantly clear in his report that he flat out denies the existence of ‘cumulative trauma’ as an injury.” Huff asserts he was employed by Bluegrass Material and its predecessors for over thirty-five years and his testimony established that as a plant operator he was involved in heavy lifting, climbing, and multiple repetitive tasks over an extended period of time, which caused increasing pain throughout his neck, shoulders, and hips. Huff cites the opinions of Dr. Hughes that Huff’s pain in these locations were common among workers subjected to repetitive lifting thereby causing cumulative trauma to the bones, joints, ligaments, tendons, and muscles in the neck, shoulders, hips, and lower back.

Huff also contends Dr. Snider was not provided with any medical records from Dr. Kelvin Perry, his treating physician, nor given “the diagnostics relied upon by Dr. Hughes and Dr. Morgan.” Huff argues Dr. Snider’s finding of no evidence of cumulative trauma in either

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1 Dr. Chad Morgan treated Huff for his workers’ compensation cumulative trauma claim and his records and answers to a questionnaire are attached to Huff’s Form 101.
shoulder cannot serve as substantial evidence, and Huff’s allegations of cumulative trauma shoulder injuries are supported by his treating physician, Dr. Perry. Huff argues the ALJ’s determination he failed to meet his burden of proving cumulative trauma injuries is erroneous and contrary to the evidence as his testimony and the opinions of Dr. Hughes establish the presence of cumulative trauma injuries. Huff seeks remand for a determination consistent with the evidence in the record that he has suffered cumulative trauma injuries as a result of his work activities.

As the claimant in a workers’ compensation proceeding, Huff had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Huff was unsuccessful in that burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). “Compelling evidence” is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ’s decision is limited to a determination
of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party’s total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the ALJ’s role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn.
from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ’s ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

In his report, Dr. Snider provided an accident and treatment history which includes a discussion of Dr. Hughes’ report, Dr. Snider’s diagnosis and his impairment ratings. Dr. Snider noted Dr. Hughes only assessed an impairment rating for the loss of bilateral shoulder motion. Dr. Snider provided the results of his physical examination, the range of motion measurements for both shoulders, and the measurements of the right and left arm. His examination of the shoulders revealed slight AC joint hypertrophy on the right, with no tenderness. The elbow and wrist range of motion was normal and impingement was negative. Manual muscle testing revealed slight weakness on right shoulder abduction. The grip strength was assessed using a Jamar hydraulic dynamometer and it revealed:

Static grip in the right affected hand was measured sequentially at 24-22-32 kg with a rapid grip of 44 kg. Static grip in the left dominant hand was measured at 38-36-36 kg with a rapid grip of 40 kg. These results indicate
inconsistent and submaximal effort, especially on the right.

Significantly, in listing the medical records reviewed, Dr. Snider indicated he had reviewed the report of Dr. Hughes and the medical questionnaire completed by Dr. Morgan. Dr. Snider provided the following diagnoses:

1. Neck pain, by report.
2. Bilateral shoulder pain, by report.
3. Low back pain, by report.

Mr. Huff appears to have suffered a shoulder sprain or strain in August 2003. He saw Dr. Echeverria and was diagnosed with sternoclavicular joint pain. He later saw Dr. Dahhan for right shoulder symptoms in July 2013. X-rays for the right shoulder were unremarkable. He was given conservative treatment, including an injection, and his symptoms appeared to have resolved. He later stopped working with heart problems and has filed a claim for ‘cumulative trauma’ for his neck, shoulders, and low back. There is simply no evidence of a ‘cumulative trauma’ condition.

Dr. Snider did not believe further treatment is reasonable or necessary for cumulative trauma. He concluded Huff could have continued working at his regular job duties without any restrictions had he not developed a heart problem. Based on the AMA Guides, Dr. Snider provided the following regarding an impairment rating:
There is simply no objective evidence of an abnormality of the cervical spine, shoulders, or low back to warrant an impairment. If Mr. Huff has legitimate new shoulder symptoms, then his complaints should be evaluated based on their merits and his response to treatment assessed.

Total: 0% WPI for "cumulative trauma," given the records currently available.

Clearly, Dr. Snider reviewed Dr. Morgan’s answers to the questionnaire and the report of Dr. Hughes. The fact Dr. Snider did not review Dr. Perry’s records in formulating his report and opinions does not render his opinions less than substantial. Rather, such information merely went to the weight to be assigned Dr. Snider’s opinions, which was a question solely to be decided by the ALJ in his role as fact-finder. Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky. App. 1995).

Dr. Snider’s opinions constitute substantial evidence upon which the ALJ was free to rely in reaching a decision on the merits. Kentucky Utilities Co. v. Hammons, 145 S.W.2d 67, 71 (Ky. App. 1940) (citing American Rolling Mill Co. v. Pack et al., 128 S.W.2d 187, 190 (Ky. App. 1939).

While Huff is correct the contrary opinions espoused by Drs. Hughes, Morgan, and Perry could have been relied on by the ALJ to support a different outcome in his
favor, in light of the remaining record, the views articulated by those physicians represent nothing more that conflicting evidence compelling no particular result. *Copar, Inc. v. Rogers*, 127 S.W.3d 554 (Ky. 2003). As previously stated, where the evidence with regard to an issue preserved for determination is conflicting, the ALJ, as fact-finder, is vested with the discretion to pick and choose whom and what to believe. *Caudill v. Maloney’s Discount Stores*, 560 S.W.2d 15 (Ky. 1977). Consequently, we find no error in the ALJ’s reliance upon Dr. Snider in dismissing Huff’s claim for cumulative trauma injuries. Because the outcome selected by the ALJ is supported by substantial evidence in the record and a contrary result is not compelled, we are without authority to disturb her decision on appeal. *Special Fund v. Francis*, supra.

Accordingly, the January 30, 2017, Opinion and Order and the March 22, 2017, Order denying the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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